

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 13,287

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Appeal of)

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INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying her medicaid coverage for an in vitro fertilization procedure. The issue is whether this procedure is a covered item under the pertinent medicaid regulations.

FINDINGS OF FACT

The petitioner is a thirty-five-year-old woman without children. Because of a preexisting medical condition it is highly unlikely that the petitioner will become pregnant through natural means; and if she did she would be at high risk for serious medical complications. The petitioner's situation is addressed in the following excerpts from letters submitted by her physician, a specialist in Reproductive Endocrinology and Infertility:

I have recently been taking care of [petitioner] who is a 34-year-old white female without any prior pregnancies. The patient has not been able to get pregnant in the past, and after a recent hysterosalpingogram done in October 1994, we confirmed that both of her fallopian tubes are blocked. She has had a salpingectomy several years ago for ovarian torsion, and at this point she also has a left hydrosalpinx with tubal occlusion. The uterus was normal.

Therefore, since this patient is currently interested in becoming pregnant, her best course would be to proceed with in vitro fertilization. In our program, the current pregnancy rate is approximately 35%.

I am writing this letter in behalf of [petitioner] in order to ascertain if any of the in vitro fertilization costs would be covered by you. As you know, IVF includes Pergonal treatments, numerous ultrasounds, as well as retrieval of eggs and time embryo transfer.

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In response to your letter of medical necessity for in vitro fertilization, I give you the following information.

As we have discussed in the office, you have only one fallopian tube remaining which is extremely damaged based on recent hysterosalpingogram at 3 cm diameter. Based on information from the literature, surgery consisting of a laparoscopy with left neosalpingostomy would be extremely unlikely to work in terms of producing a pregnancy over the next few years and would give you a very high risk of an ectopic pregnancy. As you know, an ectopic pregnancy can be quite dangerous to your health, possible rupturing and causing bleeding or even death.

A much smarter approach would be to conceive through in vitro fertilization. As we discussed, our pregnancy rate here at the University of Vermont in recent years has typically been above the national average. In 1993, our pregnancy rate per egg retrieval was 35 percent, with the national average being approximately 15-16 percent. Because your partner has a good sperm count, we would expect excellent fertilization of your embryos.

I truly believe that in vitro fertilization is a much smarter and safer approach to your problem.

The Department denied coverage for this procedure because of its determination that it is a "new procedure" that has not been approved under the Department's guidelines as being "medically necessary".

ORDER

The Department's decision is affirmed.

REASONS

Medicaid generally covers all "medically necessary" hospital and physician services. See Medicaid Manual (MM) §§ M500 and M610. However, under "Procedures Requiring Prior Authorization" the regulations include the following provision:

Routine payment will not be made for procedures falling into one or more of the following four categories. Written justification will have to be made by the physician and approved by the Medicaid Division before service is rendered.

1. New procedures of unproven value . . .

Identification of such procedures is made through the Medical Necessity Program begun by Blue Shield with the assistance of the American College of Physicians, American College of Radiology and American College of Surgeons. Also participating, is the American Academy of Family Practice, Council of Medical Specialties, American Hospital Association and American Association of Medical Colleges.

MM § M618.

The Department represents that in vitro fertilization has not been approved by the above-referenced

"Medical Necessity Program" and is, therefore, not "justified" for coverage under the above regulation.

Although the hearing officer has qualms about rigidly applying a "medically necessary" analysis to an area as emotionally and ethically high-charged as fertility procedures, as a matter of law there appears to be no question that the procedure in question is presently proscribed by the regulations. Inasmuch as the Department's decision is in accord with the regulations the board is legally bound to affirm it. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 19.

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